

No. 9/7/86-6Lab./4441.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Managing Director, Confed, Haryana, S.C.O.1014-15, Sector 22, Chandigarh.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 145 of 1985

between

SHRI SANT LAL, WORKMAN AND THE MANAGEMENT OF M/S MANAGING DIRECTOR,
CONFED HARYANA, S.C.O. 1014-15, SECTOR-22, CHANDIGARH

Present.—

Shri T.C. Gupta, A.R. for the workman.

Shri P.C. Bansal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Sant Lal and the management of M/s Managing Director, Confed Haryana S.C.O. 1014-15, Sector-22, Chandigarh, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 35791-96, dated 2nd September, 1985 :—

Whether the termination of services of Shri Sant Lal is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent on permanent basis on 21st January, 1981 and remained employed as such upto 15th December, 1983, on which date, the respondent choose to terminate his services without any prior notice, charge-sheet, though his services record was blemishless.

3. In the reply filed by the respondent, preliminary objections taken are that the respondent is a Co-operative Society registered under the Co-operative Societies Act, 1984 and as such, jurisdiction of this Court is barred under section 102 read with section 128 of the Haryana Co-operative Societies Act, 1984. It is further alleged that services of the petitioner could be dispensed with without assigning any reason as per the stipulations in the letter of appointment. On merits, it is alleged that since the petitioner was guilty of embezzling a sum of Rs. 5,999-63, so his services were terminated, who was proving a liability upon the respondent being a dishonest official. Other pleas taken are that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the demand notice is belated.

4. On the pleadings of the parties, the following issues were settled for decision by me on 28th January, 1986 :—

1. Whether the respondent is not an "Industry" as defined in section 2(j) of the I.D. Act, 1947 ? OPR.
2. Whether the claim is belated ? OPR.
3. As per terms of reference.

5. The petitioner appeared as his own witness as WW-1 and the respondent examined MW-1 Shri Jagdish Chander.

6. Heard.

Issues No. 1 and 3 :

7. Since the respondent has opened many outlets for sale of goods in the country side, it is difficult to hold that the same is not an "industry" as defined in section 2(j) of the said Act. The term "Industry" has been given the widest amplitude by the Hon'ble Supreme Court of India in the famous authority of *Bangalore Water Supply and Sewerage Board versus A. Rajappa and others* reported in 1978 Lab. I.C. 467. on behalf of the respondent it was vehemently urged that since the petitioner was guilty of various acts of misconduct, because he embezzled a sum of more than Rs. 11,399-63, which included shortage in goods and the

amount recovered in cash by the petitioner as a Salesman, the respondent was justified in terminating his services, because had he continued in employment he will further indulge in such acts thereby putting to peril the financial viability of the respondent. It was further contended that the terms of appointment of the petitioner fully authorise the respondent to terminate his services without assigning any reason. Both these contentions must fail. If the petitioner was guilty of any acts of mis-appropriation, the respondent should have held a proper probe into the same, in which, the petitioner should have been given full opportunity of participation and thereafter action can be taken against him. Simply because the respondent obtained certain documents from the petitioner, wherein he is alleged to have acknowledged his liability will not entitle the respondent from not holding a probe into the charges. Further more, order of dismissal, copy of which is Ex. M-2 it is apparent that his termination was brought about on account of various misconduct in not accounting for articles worth less than Rs. 6,000. So, it cannot be held that the order of dismissal is not a stigma upon the petitioner. The petitioner has admittedly worked with the respondent for more than 240 days during the last 12 calendar months from the date of his termination. The case of the respondent is that his services were terminated on 9th June, 1982 (though the petitioner alleged that he remained employed upto 15th December, 1983, his termination squarely falls within the ambit of term "retrenchment" as defined in section 2(o) of the said Act and could not have been brought about by the respondent without complying with the mandatory provisions of the said Act. So, the order of termination being unlawful is set aside.

Issue No. 2 :

8. On behalf of the petitioner, it was contended that since the petitioner was pursuing his remedy in Civil Court, so delay in raising the demand notice was inevitable. There is no denying the fact that the petitioner filed a Civil Suit challenging his suspension, copy of the plaint is Ex. W-2. The said suit was withdrawn by the petitioner as is evident from the copy of the judgement dated 15th December, 1983. The question of dismissal from employment of the petitioner was not in question before the Court. So, the suit in the Civil Court will not condone the delay on the part of the petitioner in raising the demand notice, otherwise Industrial Disputes Act, 1947, prescribes no limitation for the workman to raise a demand notice, though this fact cannot be ignored by the Court while awarding relief to the aggrieved workman. The demand notice received alongwith the order of reference is dated 25th May, 1985. The petitioner was dismissed from employment on 9th June, 1982. This delay of about three years remained unexplained. The normal rule, in case, order of termination is displaced is to award full wages but the Court can make a departure from the accepted rules under certain compelling circumstances, which exist in this case. Delay is one of the circumstances and the other is that the petitioner's work and conduct during the tenure of employment was not above board, though the respondent committed a folly in not holding a proper probe into the same. Under these circumstances the petitioner is ordered to be reinstated with continuity of service but with only 25% back wages. This order will not in any way exonerate the petitioner from the liabilities he has incurred with the respondent and regarding which claim is pending with the Registrar Co-operative Societies, Haryana. The reference is answered and returned accordingly with no order as to cost.

Dated the 5th May, 1986.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hissar.

Endorsement No. 145-85/696, dated 8th May, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

No. 9/7/86-6Lab./4442.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of The District Education Officer, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 218 of 1985

Between

S/SHRI SUNDER SINGH, RAMESH, RAM KISHAN, HAWA SINGH, RAM PHAL, MANGAT RAM, PRAHLAD SINGH, MAHAVIR, VIJAY PAUL, AND BALWANT SINGH, AND THE
MANAGEMENT OF THE DISTRICT EDUCATION OFFICER, ROHTAK

Present.—

Shri I.S. Dhull, A.R. for the workmen.

Shri Arun Chaudhary, District Attorney for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workmen S/Shri Sunder Singh, Ramesh, Ram Kishan, Hawa Singh, Ram Phal, Mangat Ram, Prahlad Singh, Mahavir, Vijay Paul and Balwant Singh and the management of The District Education Officer, Rohtak, to this Court, for adjudication,—vide Haryana Government Notification Nos. 50981—86, 50988—93, 50995—51000, 51002—7, dated 18th December, 1985 and 51477—82, 41484—89, 51491—96, 51498—503, 51505—10, 51512—16, dated 20th December, 1985.

Whether the termination of services of S/Shri Sunder Singh, Ramesh, Ram Kishan, Hawa Singh, Ram Phal, Mangat Ram, Prahlad Singh, Mahavir, Vijay Paul and Balwant Singh was justified and in order? If not, to what relief are they entitled?

2. After receipt of the order of references notices were issued to the parties. The parties appeared. These references, ten in number, bearing numbers 218 of 85 to 227 of 85 were ordered to be consolidated—vide my order dated 2nd April, 1986, because the question of law and facts involved were common. All these petitioners except Shri Ramesh and Prahlad Singh (who were appointed on 17th October, 1980) were appointed on 15th September, 1980 as Chowkidars and their services were terminated by the respondent on 30th April, 1985, through an order, which was illegal, arbitrary, capricious, because the same was passed in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. A similar reply was filed by the respondent to all these references and he refrained of the same is that the petitioners were appointed as contingent paid Chowkidars on monthly basis as per the rates fixed by the Deputy Commissioner, Rohtak from time to time. It is admitted that the petitioners remained continuously employed from the date of their appointment till 24th April, 1985. It is alleged that their services were terminated as per the terms and conditions of the letter of appointment issued to them and so, the order of termination passed against them was not illegal. It is further alleged that the posts of Chowkidar were abolished as the land acquired, upon which the petitioners were put on duty was returned to the owners by the revenue department. Inter alia, it is also alleged that the Director of Higher Education, Haryana in his letter dated 23rd March, 1985 advised the respondent Department at Rohtak to absorb the petitioners against existing vacancies. So, it is alleged that the termination of services of the petitioners was justified.

4. On the pleadings of the parties, the following issue was settled for decision by me on 27th February, 1986:—

1. As per terms of reference.

5. Out of the petitioners only two namely Shri Sunder Singh and Mahavir appeared. The respondent examined Shri Jai Singh clerk, District Education Officer, Rohtak, as MW-1.

6. Heard.

7. As already observed appointment of all the petitioners on 15th September, 1980 except Shri Ramesh and Prahlad Singh (who were appointed on 17th October, 1980) is not denied by the respondent. It is also not denied that the services were terminated in the month of April, 1985. It is also admitted by the respondent that the tenure of employment of the petitioners was uninterrupted, and continuous till the date of termination. The only point raised on behalf of the respondent was that since the petitioners were appointed as contingent paid Chowkidars on monthly basis as per the rates fixed by the Deputy Commissioner, Rohtak, their services could be terminated at any time without giving them benefits of section 25F of the said Act, because their termination does not fall within the ambit of term "retrenchment" as defined in section 2(oo) of the said Act. It was further contended on behalf of the respondent that with the derequisition of the land, which, was acquired for the Maharishi Dayanand University Rohtak, the petitioner who were employed to look after the standing trees and other structures standing on the said land were rendered surplus and as such, the respondent was justified in terminating their services. All these contention raised on behalf of the respondent runs counter to the salutary provisions of section 25F of the said Act. In a recent authority reported in 1985 Lab. I. C. 1733 H. D. Singas V/s. Reserve Bank of India and others, the Hon'ble Supreme Court of India even frowned upon termination of services of a Tikka Mazdoor, who was being casually employed by the respondent Reserve Bank of India for the purpose of counting coins. Here, the petitioners have remained employed with the respondent for about 4½ years and as already observed their tenure was uninterrupted, so, the management was not justified in terminating their services without giving them notice pay and retrenchment compensation as envisaged under section 25F of the said Act.

8. At the fagend of arguments a seniority list of all the Chowkidars employed by the respondent was called for from the respondent. The same has been furnished and is dated 25th April, 1986. The same contains the names of thirteen Chowkidars. Out of these three have been retained in employment namely Ajit Singh serial number 4, Shri Kishan serial No. 6 and Ishwar Singh serial No. 13. So, while terminating the services of the petitioners the settled dictum "first come last go" was also not adhered to by the respondent. So, viewed from any angle the termination of services of the petitioners was illegal and unlawful, because the respondent did not comply with the provisions of Section 25F of the said Act and as such, order of termination against the petitioners are set aside.

9. Now, the question would be as to what relief should be granted to the petitioners. On the eve of their termination, the Director Higher Education, Govt. of Haryana,—*vide* his letter dated 23rd March, 1985, copy placed upon file, advised the District Education Officer Rohtak to absorb the petitioners against existing vacancies. It cannot be believed that during the last one year no vacancy has fallen vacant in the respondent department at Rohtak. So, the letter issued by the Director Higher Education, Haryana, Chandigarh is being ignored with impunity by the District Education Officer at Rohtak. So, making a direction to the respondent to absorb the petitioners in future against any vacancy falling vacant would amount to pushing them in the vortex of administrative quagmire in search of the elusive bread. Under these circumstances, I deem it proper to award them suitable compensation for rehabilitation in lieu of reinstatement, which remedy shall be worsed then the evil. With the compensation they will get, they can make a fresh start in life. So, I award to the petitioners of a sum of Rs. 20,000 each as compensation in lieu of reinstatement. The references are answered and returned accordingly with no order as to cost. A copy of this award be placed upon files of reference numbers 219 to 227 of the year 1985.

Dated : 2nd May, 1986.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 218-85/697, dated 8th May, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 5th June, 1986

No. 9/9/86-6 Lab./4109—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Anil Rubber Mills, Plot No. 3, Sector 6, Faridabad :—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 53 of 1983

between

SHRI SHIV KUMAR, WORKMAN, AND THE MANAGEMENT OF M/S. ANIL RUBBER
MILLS PLOT NO. 3, SECTOR 6, FARIDABAD

Present.—

Shri Manohar Lal, for the Workman.

Shri H. R. Dua, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Shiv Kumar workman and the management of M/s. Anil Rubber Mills, Plot No. 3, Sector-6 Faridabad to this Tribunal for adjudication :—

Whether the termination of service of Shri Shiv Kumar was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the demand notice, which was the claim statement, it was alleged that the claimant was employed by the respondent M/s. Anil Rubber Mills in 1981 and worked there upto 12th September, 1982, when he fell ill on 13th September, 1982. He further alleged that after recovery, he wanted to join duty on production of fit certificate, but after receiving the medical fitness certificate, was not allowed to join duty. It was alleged that the termination of service of the claimant was illegal and he be reinstated with full back wages.

3. The Management in its written statement dated 7th June, 1984 pleaded that the claimant served the respondent in the first instance from 7th March, 1981 to 6th December, 1981 and for the second time from 17th December, 1981 to 28th September, 1982 on temporary basis as daily rated worker. It was further alleged that last extension of temporary period was from 17th August, 1982 to 14th September, 1982, but the claimant remained on medical leave from 13th September, 1982 to 27th September, 1982 and reported for duty on 28th September, 1982 on which date his service was terminated. It was further pleaded that the claimant refused to receive the letter of termination which was sent by registered post but was received back with the remarks that the claimant had refused to receive the same. It was further pleaded that the discharge of the claimant was justified after expiry of the fixed period of service on temporary basis.

4. The claimant in his rejoinder dated 7th August, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 7th August, 1984:—

- (1) Whether the termination of service of Shri Shiv Kumar was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the Management has examined one witness and documents Ex. M-1 to M-19 have been tendered into evidence. The claimant has appeared in the witness box and the document Ex. W-1 has been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my finding on the above issue is as under.

Issue No. 1:

7. The Management has examined MW-1 Shri Mamleshwar Kumar, Factory Manager, who stated that the claimant was employed in the first instance,—*vide* appointment letter Ex. M-1 and that his term was extended from time to time,—*vide* letters Ex. M-2 to M-6 but ultimately he was discharged on 6th December, 1981,—*vide* letter Ex. M-7 and was paid his dues,—*vide* document Ex. M-8. He further stated that the claimant again applied for the job on 17th December, 1981,—*vide* application Ex. M-9 and he was appointed,—*vide* letter Ex. M-10 and that his period was extended from time to time,—*vide* letters Ex. M-11 to M-14. He further stated that the claimant proceeded on E. S. I. leave on 13th September, 1982 and produced the medical certificates on 28th September, 1982 copies Ex. M-15 to M-17. He further stated that on 28th September, 1982 the claimant was discharged from service but he refused to receive the letter and that the letter was sent to the claimant by registered post which was received back as undelivered having been refused, copy Ex. M-8. The copy of the termination letter Ex. M-9 has been proved by this witness.

8. WW-1 Shri Shiv Kumar claimant stated that he worked in the respondent factory for two years and was turned out in 1982. He further stated that he became ill and wanted to join duty but was not allowed to do so. He further stated that he produced the fitness certificate copy Ex. W-1. He also stated that no notice pay or compensation was paid to him nor any amount was sent to him on his address.

9. A perusal of the above evidence would show that the claimant joined service of the respondent in the first instance on 7th March, 1981,—*vide* appointment letter Ex. M-1 and his period was extended from time to time,—*vide* letters Ex. M-2 to M-6 and ultimately he was discharged on 6th December, 1981,—*vide* letter and Ex. M-7 and received his dues,—*vide* letter Ex. M-8. The evidence further shows that the claimant again applied on 17th December, 1981,—*vide* application copy Ex. M-9 and was appointed,—*vide* letter Ex. M-10 and his period was extended from time to time,—*vide* letters Ex. M-11 to M-13 and he was discharged on 28th September, 1982,—*vide* letter Ex. M-14 and that registered letter Ex. M-18 was received back having been refused. The claimant thus remained in continuous service from the second time from 17th December, 1981 to 28th September, 1982. No notice pay or compensation was offered to him nor it was sent to him by money order. In the letter of discharge copy Ex. M-14, there is no mention regarding the offer of notice pay or by compensation. The claimant had rendered more than 240 days continuous service during 17th December, 1981 to 28th September, 1982 and as such the provisions of Section 25-F of the Industrial Disputes Act, 1947, should have been complied with by the Management. The termination of services of the claimant is neither justified nor in order and as such the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 28th April, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement. No. 280, dated 28th April, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.